

CAUSE NO. 2014-40964

ERIC TORRES, ADAM SINN, XS CAPITAL	§	IN THE DISTRICT COURT OF
MANAGEMENT, L.P., and ASPIRE	§	
COMMODITIES, L.P.,	§	
Plaintiffs	§	
	§	HARRIS COUNTY, TEXAS
v.	§	
	§	
CRAIG TAYLOR and ATLAS	§	
COMMODITIES, L.L.C.,	§	
Defendants	§	157TH JUDICIAL DISTRICT

CAUSE NO. 2015-49014

ERIC TORRES,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
S. JAMES MARSHALL,	§	
Defendant.	§	157TH JUDICIAL DISTRICT

**DEFENDANTS/COUNTER-PLAINTIFFS’  
MOTION TO COMPEL DEPOSITION OF ADAM SINN**

Defendants/Counter-Plaintiffs Craig Taylor (“Taylor”) and Atlas Commodities, LLC (“Atlas”) and Defendant S. James Marshall (“Marshall”) (collectively “Defendants”) file this Motion to Compel the Deposition of Adam Sinn as follows:

**I. INTRODUCTION**

In keeping with his pattern of obstructing discovery, Plaintiff/Counter-Defendant Adam Sinn (“Sinn”) has effectively refused to appear for deposition. Counsel for Defendants began asking for mutually convenient dates to resume Mr. Sinn’s deposition on February 4, 2016. In response, Sinn’s counsel has offered various dates in Puerto Rico, one weekend in May, and an

unidentified date in June. Given the difficulty scheduling his deposition, Defendants are not confident that Sinn will appear for deposition in June. Defendants are entitled to depose Sinn and to do so in Harris County. They respectfully request that the Court order Sinn to appear in Harris County for deposition on a date certain.

## II. BACKGROUND

Taylor and Atlas took Sinn's deposition on April 8, 2015, using 2 hours and 1 minute of the 6 hours permitted under the Texas Rules of Civil Procedure. Ex. A. Tex. R. Civ. P. 199.5(c). Since then, Sinn produced 265 pages of documents. *See* Ex. B. Because Defendants did not have the opportunity to depose Sinn regarding any of the documents, they requested on February 4, 2016 that Sinn reappear for deposition. Ex. C. Sinn's counsel responded that he would contact Sinn to obtain convenient dates for his deposition. *See* Ex. C.

Three months later, on May 2, 2016, counsel for Sinn finally provided a date for his deposition: that coming weekend at their offices. Ex. E. The date was not convenient for Defendants, especially on such late notice, and counsel for Defendants requested a date for Sinn's deposition to take place during business hours. Ex. F.

On May 18, 2016, counsel for Sinn offered two weekday dates for his deposition, to take place in Puerto Rico, where Sinn resides. Ex. G. Because Defendants are entitled to take Sinn's deposition in Harris County, where Sinn filed this lawsuit against them, counsel for Sinn clarified that Sinn's deposition would take place during business hours and in Harris County. Ex. H. On May 25, 2016, counsel for Sinn again offered dates for Sinn's deposition to take place in Puerto Rico and further stated that Sinn would be in Houston sometime in June, but that he would not know the exact date until the week before Sinn's arrival. Ex. I.

Sinn's conduct regarding the scheduling of his deposition is unreasonable at best. Puerto Rico is nearly 2,000 miles away from Harris County, Texas. Sinn chose to file this lawsuit in Harris County. The Court should compel Sinn to appear in Harris County for deposition on a date certain.

### III. ARGUMENT AND AUTHORITIES

Sinn is a Plaintiff. Defendants are entitled to depose him without unnecessary delay. *See* Tex. R. Civ. P. 1 (The purpose of the Rules is to achieve a fair result in lawsuits “with as great expedition and dispatch” as possible.). Sinn's intentional delay of discovery—including only agreeing to be deposed on a date three months following Defendants' request—is the intentional improper obstruction and delay of the discovery process. Though Defendants do not seek them now, such conduct is by itself sanctionable. *See, e.g., Hagerman v. Wells Fargo*, 2006 WL 2448598, at \*11 (Tex. App.—Austin 2006, no pet.) (“[T]he imposition of sanctions to compensate for the attorneys' fees of a party that has suffered delay as a result of the disobedient party's discovery abuse is expressly permitted by Rule 215.2(b).”)

Under the Texas Rules of Civil Procedure, Harris County, Texas, where Sinn filed this lawsuit, is a reasonable place to take his deposition. *See* Tex. R. Civ. P. 199.2(b)(2)(C). San Juan, Puerto Rico, 1,997 miles away from Houston, Texas, is not. *See* Ex. J. Defendants should not be required to expend hundreds or thousands of dollars traveling to Puerto Rico to take Sinn's—a Plaintiff—deposition. Sinn subjected himself to jurisdiction in Harris County and chose Harris County as the venue for this lawsuit. Sinn's attempt to delay the discovery process by refusing to provide a date certain for his deposition in Harris County should not be permitted. He should be compelled to appear for deposition on a date certain in Harris County.

**IV. CONCLUSION AND PRAYER**

For these reasons, Defendants/Counter-Plaintiffs Craig Taylor and Atlas Commodities, LLC respectfully request that the Court compel Plaintiff/Counter-Defendant Adam Sinn to appear for deposition in Harris County, Texas on a date certain within the next thirty days.

Respectfully submitted,  
BERG FELDMAN JOHNSON, LLP

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing instrument was served by electronic filing, certified mail return receipt requested, email, or facsimile on May 27, 2016 as follows:

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